

**A RESOLUTION  
BY CITY UTILITIES COMMITTEE**

**A RESOLUTION AUTHORIZING THE MAYOR TO ENTER AN ENCROACHMENT AGREEMENT FOR NON-CONFORMING USES WITH THE UNITED STATES OF AMERICA, BY AND THROUGH THE ADMINISTRATOR OF GENERAL SERVICES FOR THE INSTALLATION OF HYDRAULIC BOLLARDS, PLANTERS AND RELATED AMENITIES SURROUNDING THE UNITED STATES COURT OF APPEALS BUILDING IN THE CITY OF ATLANTA, ON BEHALF OF THE DEPARTMENT OF PUBLIC WORKS; AND FOR OTHER PURPOSES**

**WHEREAS**, the United States of America, acting by and through the Administrator of General Services ("GSA"), has plans to improve and expand the present Elbert P. Tuttle United States Court of Appeals Building, and has purchased two properties abutting Fairlie Street, across from the Court of Appeals building; and

**WHEREAS**, as part of its Courthouse Security Project, GSA desires to make improvements to the Court of Appeals Building, consisting of the installation of Hydraulic Bollards, Planters, and related amenities (the "Project"); and

**WHEREAS**, GSA desires to construct and install at the Courthouse, as part of the Project, certain elements that will encroach into the City of Atlanta ("City") rights-of-way consisting of Hydraulic Bollards, Planters, and related amenities, said locations being more fully described and shown on Exhibit A attached hereto and incorporated herein by reference (the "Encroachment Area(s)"); and

**WHEREAS**, GSA desires to obtain from the City an agreement for the construction, installation, maintenance, repair and replacement of the Encroachments into, and the presence and existence of the Encroachments in the Encroachment Areas; and

**WHEREAS**, GSA is requesting this permanent construction and maintenance agreement to accomplish the tasks identified above; and

**WHEREAS**, the City's Code of Ordinances, Section 138, Article II, requires a Right-of-Way Encroachment Agreement for Non-Conforming Uses for the construction and operation of private structures or properties that encroach into and within the public right-of-way for which there is not an applicable agreement; and

**WHEREAS**, the Commissioner of the Department of Public Works has reviewed the plans for the Right-of-Way Encroachments and has determined that the work will not adversely impact the ability of the affected Rights-of-Way to handle vehicular or pedestrian traffic or otherwise to perform its intended public function.

**THE CITY COUNCIL OF THE CITY OF ATLANTA, GEORGIA, HEREBY RESOLVES**, that the Mayor is authorized to enter into an Encroachment Agreement for Nonconforming Uses, as outlined Section 138, Article II, of the City's Code of

Ordinances, with the Administrator of General Services, for the installation of the Encroachments, in a form and pursuant to conditions determined by the Commissioner of the Department of Public Works and the City Attorney, to be desirable, appropriate and in the best interests of the City of Atlanta for this transaction.

**BE IT FURTHER RESOLVED**, that the City Attorney is directed to prepare an Encroachment Agreement for Non-Conforming Uses in accordance with Section 138, Article II, of the City's Code of Ordinances for execution by the Mayor.

**BE IT FINALLY RESOLVED**, that the Encroachment Agreement for Non-Conforming Uses will not become binding upon the City and City will incur no liability or obligation under it until it has been executed by the Mayor, attested to by the Municipal Clerk, approved as to form by the City Attorney and delivered to the Administrator of General Services.

## **EXHIBIT "A"**

### **LOCATIONS:**

#### **Exterior Vehicular Protection Barrier Systems:**

11<sup>th</sup> Circuit US Court of Appeals Agent for Same: US General Services Administration – Southeast Sunbelt Region, Atlanta, GA Encroachment in Fairlie Street Right-of-Way between Poplar Street's south R.O.W. line and Walton Streets North R.O.W. line.

#### **Detailed Description**

The needed exterior vehicular barriers security systems planned shall be constructed behind the existing US Court of Appeals Building, (Tuttle Building) in Fairlie Street between Poplar Street on the north and Walton Street on the south. The in Right-of-Way encroachments in Fairlie Street shall include the following items as shown on the Construction Document / Plans Sheets by Smoak Designs, Inc. (See Attached :Fairlie St. Site Plan / First Floor Plan" Sheet # A-101, dated 10-27-2005 by Smoak Designs, Inc.)

Operable Hydraulic bollards in reinforced concrete foundations to a depth of over 5 feet below the Fairlie Street paved surface, fixed bollards, new fixed crash rated planter and planting, guard house foundation pad, buried control conduit / wires, drain lines for bollard cylinders and buried hydraulic fluid feeder lines, electrical wires in conduit for new stop and go lights associated with the new operable bollards and including new paving patchwork, and a relocated fire hydrant, etc.

Final signed & sealed 100% Construction Plans and Specifications by Smoak Designs, Inc. A-E Team are as follows :Elbert P. Tuttle US Ct. of Appeals Building, Atl., GA Vehicular Barricades Project:

<b><u>Sheet #</u></b>	<b><u>Sheet Date</u></b>	<b><u>Description of Sheet</u></b>
G101	7-11-2005	Cover Sheet ( Project Title / Index & Vicinity Map)
G102	10-28-2005	Gen. Notes / Abbreviations / Legend
A101	7-11-2005	Fairlie Street Site Plan & Basement Floor Plan
A111	7-11-2005	Guard House Foundation / Hyd. Pumps Plan
A401	7-11-2005	Walton St. Elevation & Poplar St. Elevation
A501	1-03-2006	Bollard Construction Notes and Sections
A502	1-03-2006	Single Bollard Plan, Elev. & Sections
A503	1-03-2006	Fixed Bollard Array Plan and Side Elev. / Section
A504	1-03-2006	Manually Operated Bollards – Details (Elev & Sect)
A505	2-20-2006	Bollard Interconnect Diagrams (Controls)
A506	1-03-2006	Planter and Stop & Go Light Std. Elev's. & Details
C101	not dated	Plan at Fairlie Street / Constr & Gen. Notes
C201	not dated	Civil Details
E00	4-19-2006	Electrical Legend and Notes
E01	4-19-2006	Site Plan Electrical
E11	4-19-2006	Basement Floor Plan - Electrical

100% Final "Project Manual" Vehicular Barricades project Specifications by Smoak Designs, Inc. - dated April 17, 2006

**After Recording Return To:**

Gabriel N. Steinberg  
Special Counsel for Real Estate  
Office of Regional Counsel (4L)  
General Services Administration  
Region IV, Atlanta, GA 30303

**ENCROACHMENT AGREEMENT FOR NON-CONFORMING USES**

This AGREEMENT ("Agreement") is entered into as of the \_\_\_\_\_ day of \_\_\_\_\_ 2006, between the **CITY OF ATLANTA**, a municipal corporation, chartered pursuant to the laws of the State of Georgia ("CITY"), and the **UNITED STATES OF AMERICA**, acting by and through the Administrator of General Services (sometimes referred to as "GSA" or "ENCROACHING PARTY").

**BACKGROUND:**

Whereas, ENCROACHING PARTY, as part of its Courthouse Security Project, desires to make improvements to the Elbert P. Tuttle United States Court of Appeals Building, consisting of the installation of Hydraulic Bollards, Planters, and related amenities (the "Project");

Whereas, ENCROACHING PARTY desires to construct and install at the Courthouse, as part of the Project, certain elements that will encroach into the CITY Rights-of-Way consisting of Hydraulic Bollards, Planters, and related amenities, said locations being more fully described and shown on Exhibit A attached hereto and incorporated herein by reference (the "Encroachment Area(s)");

Whereas, ENCROACHING PARTY desires to obtain from CITY an agreement for the construction, installation, maintenance, repair and replacement of the Encroachments into, and the presence and existence of the Encroachments in the Encroachment Areas;

Whereas, ENCROACHING PARTY is requesting this permanent construction and maintenance agreement to accomplish the tasks identified above;

Whereas, CITY's Code of Ordinances, Section 138, Article II, requires a Right-of-Way Encroachment Agreement for Non-Conforming Uses for the construction and operation of private structures or properties that encroach into and within the public right-of-way for which there is not an applicable agreement; and

Whereas, the Council of CITY has authorized the Mayor, by Resolution, to enter into an Encroachment Agreement for Non-Conforming Uses with ENCROACHING PARTY, allowing it to install and construct certain structures or properties that encroach into and within the public right-of-way;

Accordingly, CITY and ENCROACHING PARTY agree as follows:

1. **Public Benefit of Encroachments.** In the opinion of the Commissioner of CITY's Department of Public Works, the construction, installation, operation, use and maintenance of the Encroachments (the Encroachments may also be referred to as the "Work") extending into the Encroachment Area, as shown on the attached Exhibit A, will constitute a benefit to the public.
2. **Grant Of Rights In Encroachment Area.** CITY grants to ENCROACHING PARTY the right to construct, install, operate, use, repair and maintain the Work within the Encroachment Areas, as shown on the attached Exhibit A. The Commissioner of Public Works has reviewed the plans and has determined that the Work will not adversely impact the ability of the affected Rights-of- Way to handle vehicular or pedestrian traffic or otherwise to perform its intended public function. Accordingly, ENCROACHING PARTY shall not construct, install, operate, use, repair and maintain any Work within the Encroachment Areas not listed on the attached Exhibit A.
3. **Agreement Is Condition Precedent To Permitting Process.** In addition to ENCROACHING PARTY satisfying all other applicable legal, administrative or other requirements, the execution of this Agreement by ENCROACHING PARTY is a condition precedent to CITY considering issuing a permit for constructing, installing, operating, using, repairing and maintaining the Work within the Encroachment Area, and that this Agreement will bind ENCROACHING PARTY, the owners of the property abutting the affected Rights- of-Way, and their successors in title in perpetuity or until the Agreement is terminated or otherwise expires, unless the ENCROACHING PARTY presents plans to the CITY for its review pursuant to 40 U.S.C. § 3312 for the permanent closure of the Right-of-Way in the area, including a bridge or tunnel or any or all other means of installing, operating, using, repairing and maintaining the ENCROACHMENT PARTY's facility on the Rights-of-Way, and without prejudice.
4. **Plans, Calculations and Technical Specifications.** All alterations, excavations or encroachments permitted on, in, over, under or within the Encroachment Area(s) must be pursuant to plans, calculations, and technical specifications prepared by a professional engineer licensed to practice in the State of Georgia, and approved by the Commissioner of CITY's Department of Public Works, pursuant to the standards set forth in or promulgated under Chapter 138 of CITY's Code of Ordinances and, when applicable, all other appropriate legal requirements or administrative rules, including, but not limited to, the standards of Georgia Department of Transportation or the Federal Highway Administration, or any other governmental agency having jurisdiction over the Right-of-Way or Encroachment Area(s).
5. **Public Liability insurance.** ENCROACHING PARTY, an agency of the United States Government, is prohibited by law from indemnifying any party. Accordingly, ENCROACHING PARTY agrees that it will require any contractors

who perform the work contemplated herein to indemnify and hold CITY harmless from all claims arising out of the use of the Encroachment Area(s) and the construction, maintenance, or removal of the Work in the Encroachment Area(s), and to maintain a policy of public liability insurance, at no expense to CITY, satisfactory to CITY and naming CITY as an additional named insured, in an amount approved by CITY's Risk Manager.

6. **Removal of Utilities And Facilities From Encroachment Area; Structural or Property Deterioration.** ENCROACHING PARTY agrees to remove all Work from the Encroachment Area(s) without cost to CITY if the Commissioner of CITY's Department of Public Work determines that removal is required when the Work ceases to have continuous use, has a change in the type or degree of use, or if the structural or functional soundness of the Work deteriorates due to lack of maintenance, damage by fire, flood, wind, or other act of God. CITY shall have the right and duty to require the removal of any Work thus affected upon notice of not less than sixty (60) days to the ENCROACHING PARTY.
7. **Compliance With CITY's Code Of Ordinances.** ENCROACHING PARTY agrees at all times during the term of this Agreement to comply with all of the terms of CITY's Code of Ordinances applicable to this Agreement, including, but not limited to Chapter 138, provided that such ordinance is not in conflict with the Federal laws, including statutory or regulatory provisions governing the ENCROACHING PARTY.
8. **Compliance With Applicable Law; Reparation Of Facilities And Utilities.** ENCROACHING PARTY agrees to conduct all activities within the Encroachment Area(s) and Rights-of-Way in accordance with all applicable local, state, and federal rules, regulations, and standards. ENCROACHING PARTY agrees to maintain the private utilities and facilities installed and constructed in the Encroachment Area(s) in good condition, and will require its contractors to repair any damage to any City facilities caused by the contractor, and any public or private utilities, if CITY determines that the condition of the work installed and constructed by ENCROACHING PARTY in the Encroachment Area(s) present an imminent danger to life or property of the public, CITY may undertake all reasonable measures to protect life or property of the public, and the expense of those measures will be borne by ENCROACHING PARTY.
9. **Reimbursement Of Damages To CITY.** ENCROACHING PARTY agrees to require its contractors to repair any damage to the Rights-of-Way or Encroachment Area(s) resulting from the contractors' use of the Encroachment Area(s) or the construction, installation, maintenance, repair or use of the utility facilities in the Encroachment Area(s) and will require contractors to reimburse CITY for any damages to the Rights-of-Way or Encroachment Area(s) resulting from the contractors' use of the Encroachment Area(s) or the construction, installation, maintenance, repair or use of the Work in the Encroachment Area(s).

10. **Annual Inspection.** ENCROACHING PARTY agrees to provide an annual inspection of all WORK constructed and installed in the Encroachment Area(s) to ensure that the same is in a safe and suitable condition for public use and travel, and to provide to CITY a written report within thirty (30) days of inspection.

11. **Non-Exclusivity of Agreement.** This Agreement is not exclusive and does not negate any past, present, or future agreement that CITY may enter into with any other utility owner or provider for use of the Rights-of-Way, except that such agreement shall require the approval of the ENCROACHING PARTY.

12. **Notices.**

12.1. **Addresses:** CITY and ENCROACHING PARTY agree that all notices, demands, and requests required under this Agreement must be in writing and sent to CITY or to ENCROACHING PARTY addressed as follows:

TO THE CITY: Commissioner  
City of Atlanta, Department of Public Works  
55 Trinity Avenue, S.W.  
Atlanta, Georgia 30303

TO ENCROACHING PARTY: General Services Administration  
Office of Regional Counsel (4L)  
77 Forsyth Street, Suite 600  
Atlanta, GA 30303

12.2 **Delivery.** All notices given by either party to the other under this Agreement must be in writing and may be delivered by:

- 12.2.1. regular mail, first class, postage prepaid;
- 12.2.2. certified or registered mail;
- 12.2.3. facsimile, with a hard copy sent within 24 hours of transmission by one of the other permitted delivery means; or
- 12.2.4. hand-delivery, to the parties at the addresses and facsimile numbers specified in the Clause titled "Addresses".

12.3 **Receipt.** Notices sent by mail will be deemed received three (3) days after deposit in the mail, properly addressed. Notices sent by certified or registered mail will be deemed to be received upon the date of the acknowledgment. Notices sent by facsimile will be deemed to be received upon successful transmission to the proper facsimile number; if the sender can produce a facsimile transmission confirmation report. Notices delivered by hand-delivery will be deemed to be received upon written acceptance by the respective party.

**12.4 Change of Address or Facsimile Number.** Either party may, at any time, change its respective address or facsimile number by sending written notice to the other party of the change.

13. **Default and Termination of Agreement.** If ENCROACHING PARTY defaults in its performance of this Agreement, and fails to cure the default within thirty (30) days of CITY's written notice to ENCROACHING PARTY of the default [or if such default is not capable of being cured within Sixty (60) days], ENCROACHING PARTY has not commenced curing the default and diligently pursued such cure to completion within a reasonable amount of time), this Agreement may be terminated by CITY upon thirty (30) days prior written notice to ENCROACHING PARTY.
14. **Parties Bound.** This Agreement will be binding upon and inure to the benefit of CITY and ENCROACHING PARTY and their respective permitted successors, successors in title and assigns.
15. **Governing Law.** This Agreement will be construed under Georgia law. ENCROACHING PARTY and CITY fix jurisdiction and venue for any action brought with respect to this Agreement in Fulton County, Georgia.
16. **Entire Agreement.** This Agreement contains the entire agreement of the parties with respect to its subject matter and no representations or agreements, oral or otherwise, which are not set forth in the Agreement, will be of any force or effect.

CITY:

ENCROACHING PARTY:

\_\_\_\_\_  
MAYOR

BY: \_\_\_\_\_  
NAME: \_\_\_\_\_  
TITLE: \_\_\_\_\_

ATTEST:

ATTEST:

\_\_\_\_\_  
MUNICIPAL CLERK (Seal)

\_\_\_\_\_  
NOTARY PUBLIC  
MY COMMISSION EXPIRES: \_\_\_\_\_  
[SEAL]



**WITNESS:**

\_\_\_\_\_  
**NAME:** \_\_\_\_\_

\_\_\_\_\_  
**NOTARY PUBLIC**

**MY COMMISSION**  
**EXPIRES:** \_\_\_\_\_  
**(SEAL]**

**APPROVED:**

\_\_\_\_\_  
**COMMISSIONER, DEPARTMENT**  
**OF PUBLIC WORKS**

**RECOMMENDED:**

\_\_\_\_\_  
**DIRECTOR, DEPARTMENT OF PROCUREMENT**

**WITNESS:**

\_\_\_\_\_  
**NAME:** \_\_\_\_\_

\_\_\_\_\_  
**NOTARY PUBLIC**

**MY COMMISSION**  
**EXPIRES:** \_\_\_\_\_  
**[SEAL]**

**APPROVED AS TO FORM:**

\_\_\_\_\_  
**CITY ATTORNEY**

TRANSMITTAL FORM FOR LEGISLATION

TO: MAYOR'S OFFICE

ATTN: GREG PRIDGEON

Legislative Counsel (Signature): Megan S. Middleton *MS Middleton*

Contact Number: 6207

Originating Department: Public Works

Committee(s) of Purview: City Utilities

Council Deadline: November 13, 2006

Committee Meeting Date(s): November 28, 2006 Full Council Date: December 4, 2006

Commissioner Signature *[Signature]* DAVID E. SCOTT

CAPTION

A RESOLUTION AUTHORIZING THE MAYOR TO ENTER AN ENCROACHMENT AGREEMENT FOR NON-CONFORMING USES WITH THE UNITED STATES OF AMERICA, BY AND THROUGH THE ADMINISTRATOR OF GENERAL SERVICES FOR THE INSTALLATION OF HYDRAULIC BOLLARDS, PLANTERS AND RELATED AMENITIES SURROUNDING THE UNITED STATES COURT OF APPEALS BUILDING IN THE CITY OF ATLANTA, ON BEHALF OF THE DEPARTMENT OF PUBLIC WORKS; AND FOR OTHER PURPOSES

FINANCIAL IMPACT (if any) \$

Mayor's Staff Only

Received by Mayor's Office: 11/14/06 *[Signature]* Reviewed by: *[Signature]*  
(date)

Submitted to Council: 11/17/06  
(date)